

IN THE CHANCERY COURT OF DESOTO COUNTY, MISSISSIPPI DEC 1 9 01 AM '97

MARY L. BROOKS, et. al.  
PlaintiffsBK 325 PG 471  
W.E. DAVIS CH. CLK.

vs.

CIVIL ACTION NO. 97-9-1312

UNION PLANTERS NATIONAL  
BANK, et. al.  
Defendants**JUDGMENT****REMOVING CLOUD ON TITLE AND QUIETING TITLE IN PLAINTIFFS**

THIS STATUTORY ACTION came before the Court pursuant to Section 11-17-31, MCA, by owners of real property for removal of cloud on title and for judgment quieting title. Upon review of the pleadings the Court hereby finds and adjudicates as follows:

**PLAINTIFFS.**

1. Plaintiffs are residents of Desoto County, Mississippi. They hold record title to real property located in Desoto County, Mississippi as tenants by the entirety with full right of survivorship and not as tenants in common.

**DEFENDANTS.**

2. Defendant Union Planters National Bank is a National Banking

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Corporation licensed to do business in the State of Mississippi. Said Defendant is the successor-in-interest, by merger, to United Southern Bank, a Mississippi Banking Corporation. Said Defendant has filed and answer, not objecting to the relief sought by Plaintiff.

3. Defendant Payless Cashways, Inc. is an Iowa corporation licensed to do business in the State of Mississippi. Default has been entered against said Defendant. However, said Defendant is the debtor in a Chapter 11 bankruptcy proceeding in the U.S. Bankruptcy Court for the Western District of Missouri, St. Joseph Division, as case number 97-50543-SJ-1, and an automatic stay is in effect. A lift of said stay is required before the Court can enter a judgment against said Defendant.

4. Defendant Mississippi Materials Company, is a Mississippi Corporation. Said Defendant has filed an answer. The answer raises certain issues which will be adjudicated by the Court at a future date. This judgment does not affect the rights of said Defendant.

#### JURISDICTION AND VENUE.

5. The real property is located in Desoto County, Mississippi.

PROPERTY.

6. The property consists of a subdivided lot improved with a single family residence. It is described as follows:

Lot 59, Section "D", Stonehedge Place Subdivision, as per plat recorded in book 43 at page 13 in the office of the Chancery Clerk of Desoto County, Mississippi

Indexing Instruction: Section 29, Township 1 South, Range 7 West

Street Address: 1275 Thames Drive, Southaven, MS 38671

TITLE TO PROPERTY AND CLOUDS THEREON.

7. Title to the property is vested as follows:

Mary L. Brooks and Michael S. Brooks, Sr., husband and wife as tenants by the entirety with full right of survivorship and not as tenants in common.

8. There is no adverse occupancy of any part of the property.

9. There are clouds on the title to the property for the following reasons:

(a) Plaintiffs acquired title by warranty deed from Venture

Builders Corporation. Venture Builders Corporation acquired title by trustee's deed upon foreclosure of a deed of trust in favor of United Southern Bank. The foreclosure is defective because the substitution of trustee refers to the wrong date and shows an incorrect legal description, and because the trustee's deed fails to refer to a corrected Deed of Trust.

- (b) In the chain of title appear construction liens in favor of Defendant Payless Cashways, Inc. and in favor of Defendant Mississippi Materials Company, and also a judgment lien in favor of Defendant Mississippi Material Company. These liens would have been extinguished by the foreclosure of the Deed of Trust in favor of United Southern Bank. However, said foreclosure is defective.
- (c) The defective foreclosure cannot be cured by another foreclosure. At the foreclosure sale, United Southern Bank received payment in full and that fact, pursuant to Section 89-1-49, MCA extinguished the deed of trust.

#### DERAIGNMENT OF TITLE.

10. Deraignment of Plaintiffs' title under Section 11-17-35, MCA is not required. Plaintiffs are the only persons claiming title to the property in question.

#### CAUSES OF ACTION.

##### 11. Removal of Clouds Upon Title.

If a conveyance or other evidence of title to real property, or

if a claim by a person not the rightful owner thereof, casts any doubt or suspicion on the title of the real owner, such real owner may have such conveyance or other evidence of title or claim cancelled and such cloud, doubt or suspicion removed from said title.

Section 11-17-31, MCA.

12. Deraignment of Title.

In actions to confirm title to real estate, and to cancel and remove clouds therefrom, the Plaintiff must set forth in plain and concise language the deraignment of his title, unless good and valid reason is given why Plaintiff does not deraign his title. Good and valid reason for not deraigning title exists where title itself is not contested.

Section 11-17-35, MCA.

JUDGMENT IS THEREFORE ENTERED against Defendant UNION PLANTERS NATIONAL BANK AS FOLLOWS:

(a) Title to the property in question is vested in:

Mary L. Brooks and Michael S. Brooks, Sr., husband and wife as tenants by the entirety with full right of survivorship and not as tenants in common;

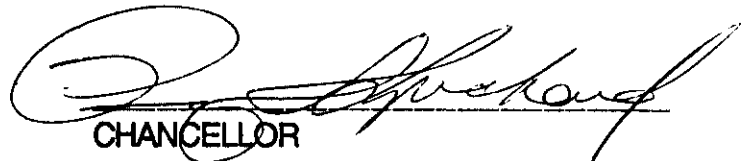
(b) Title to the property is subject only to the following, and no

other, claims, encumbrances or rights:

- (1) Local Taxes and Special Assessments.
- (2) A 35 ft building line easement on the front of the lot as shown on the recorded plat.
- (3) A 5ft utility easement over the sides and the rear lot lines as shown on the recorded plat.
- (4) A deed of trust executed by Plaintiffs to James E. Woods, Trustee for Charles R. Pogue, beneficiary, recorded on 1-17-95 in book 744 at page 236 in the amount of \$58,259.57 and re-recorded with a corrected legal description on 2-2-96 in book 811 at page 777.
- (5) An assignment of said deed of trust by Charles R. Pogue to United Southern Bank, recorded on 1-18-95 and re-recorded with a corrected legal description on 3-5-96 in book 813 at page 704.
- (6) A construction lien against The Monarch Corporation in favor of Mississippi Materials Company, in the amount of \$2,773.44, recorded in book 7 at page 12.
- (7) A construction lien against The Monarch Corporation in favor of Payless Cashways, Inc., in the amount of \$6,653.00 recorded in book 7 at page 38.
- (8) A judgment against The Monarch Corporation in favor of Mississippi Materials Company, in the amount of \$8,078.68, enrolled on 7-28-94 in roll no. 17.

(b) Cost are assessed to Plaintiffs.

SO ORDERED, this the 19<sup>th</sup> day of November, 1997

  
CHANCELLOR

Submitted by:

  
Christian Goeldner  
Attorney for Plaintiffs

STATE OF MISSISSIPPI, COUNTY OF DESOTO  
I HEREBY CERTIFY that the above and foregoing is a true  
copy of the original filed in this office.

This the 24<sup>th</sup> day of Nov, 19 97

W. E. DAVIS, Clerk of the Chancery Court

By J. Kink D.C.